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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE THOMAS J. WHELAN)

UNITED STATES OF AMERICA,)	CASE NO.: 08CR1908-W
)	
Plaintiff,)	DATE: July 7, 2008
)	TIME: 2:00 p.m.
v.)	
)	NOTICE OF MOTIONS AND MOTIONS TO:
MARCO ANTONIO ROMAN-SERRANO,)	1) COMPEL DISCOVERY; AND
)	2) GRANT LEAVE TO FILE FURTHER
Defendant.)	<u>MOTIONS</u>
)	
)	

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY; AND
ALESSANDRA SERANO, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on July 7, 2008, or as soon thereafter as counsel may be heard, Marco Antonio Roman-Serrano, by and through his counsel, Victor N. Pippins and Federal Defenders of San Diego, Inc., will ask this Court to enter and order granting Mr. Roman-Serrano's motions in the above listed case.

MOTION

Marco Antonio Roman-Serrano, by and through his attorneys, Victor N. Pippins, and Federal Defenders of San Diego, Inc., hereby moves this Court to grant the following motions:

1) Compel Discovery; and

2) Grant Leave to File Further Motions.

These motions are based upon the instant motion and notice of motion, the attached statements of facts and memorandum of points and authorities, and any and all other materials that may come to this Court's attention at the time of the hearing on this motion.

Respectfully submitted,

Dated: June 23, 2008

/s/ Victor N. Pippins
VICTOR N. PIPPINS

Federal Defenders of San Diego, Inc.
Attorneys for Mr. Roman-Serrano

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

Alesandra Serano
Alesandra.Serano@usdoj.gov

Respectfully submitted,

DATED: June 23, 2008

/s/ Victor Pippins
VICTOR N. PIPPINS
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Roman-Serrano

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (HONORABLE THOMAS J. WHELAN)

11 UNITED STATES OF AMERICA,)

CASE NO.: 08CR1908-W

12 Plaintiff,)

DATE: July 7, 2008

13 v.)

TIME: 2:00 p.m.

14 MARCO ANTONIO ROMAN-SERRANO,)

STATEMENT OF FACTS AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION

15 Defendant.)
16

17
18 **I.**

19 **STATEMENT OF FACTS**

20 According to information provided by the government, which Mr. Roman-Serrano does not adopt
21 or accept, Mr. Roman-Serrano made application for entry into the United States from Mexico through the
22 pedestrian entrance at the San Ysidro, California Port of Entry at approximately 11:00 a.m. on April 6, 2008.
23 Customs and Border Protection Agent Juan Lujan escorted Mr. Roman-Serrano to the Port Enforcement Team
24 for further processing. Subsequent investigation led to Mr. Roman-Serrano being arrested for violation of
25 Title 8, United States Code section 1326, Attempted Entry After Deportation.

26 On June 11, 2008 an indictment was handed down by the Grand Jury of the Southern District of
27 California, charging Mr. Roman-Serrano with a violation of Title 8, United States Code section 1326 (a) and
28 (b). A not guilty plea was entered on Mr. Roman-Serrano's behalf.

1 such an application would be found in the A-file and because such an application is not in the A-file,
2 Mr. Roman-Serrano must not have applied for permission to enter the United States.

3 Although the certificate might be admissible, the question of the thoroughness of the search
4 conducted by the Government of the A-file is, and should be, open to cross-examination. United States v.
5 Sager, 227 F.3d 1138, 1145 (2000) (error not to allow jury to “grade the investigation.”). Mr. Roman-Serrano
6 should be able to review his A-file in order to see whether any application for lawful admission exists.
7 Moreover, Mr. Roman-Serrano should also be able to verify whether other documents that would ordinarily
8 be in the A-file are “non-existent,” or otherwise missing from her A-file. Mr. Roman-Serrano may assert a
9 defense that his application for lawful entry was lost or otherwise misplaced by the Government. He must
10 be allowed the opportunity to review his A-file and the manner in which it is being maintained by the
11 Government in order to present this defense.

12 13 III.

14 MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

15 *Mr. Roman-Serrano has received 95 pages of discovery.* He has not however received any
16 audiotapes of his deportation proceeding as well as a photocopy of the A-file. As information comes to light,
17 due to the government providing additional discovery in response to these motions or an order of this Court,
18 Mr. Roman-Serrano may find it necessary to file further motions. It is, therefore, requested that Mr. Roman-
19 Serrano be allowed the opportunity to file further motions based upon information gained through the
20 discovery process. Specifically, because Mr. Roman-Serrano’s collateral attack on the underlying
21 deportations relies on the audiotapes of the deportation proceedings, he requests the opportunity to file further
22 briefing to support his collateral attack once he has been provided an opportunity to listen to the proceedings.

IV.

CONCLUSION

For the foregoing reasons, Mr. Roman-Serrano respectfully requests that the Court grant the above motions.

Respectfully submitted,

/s/ Victor Pippins

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Dated: June 23, 2008